

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.Nos.1714 of 2014 and 35 of 2015

W.A.No.1714 of 2014

1 S.R.VEERAIYAN
2 S.SIVAKUMAR
3 S.VENKATACHALAM
4 A.RAMACHANDRAN
5 C.BALASUBRAMANIAN
6 S.TESLANIC
7 M.ARUMUGAM
8 M.MARIMUTHU
9 A.RAMRAJ
10 N.MURUGESAN
11 P.KARUPIAH
12 G.VISWANATHAN
13 A.SUBRAMANIAN
14 R.THANGARAJ
15 S.BETHARAJ
16 G.JAYARAJ
17 V.SELVARAJ
18 K.KRISHNAMURTHY
19 S.R.NAVANEETHAM
20 K.JAYAGOPAL
21 A.C.JAYAKUMAR
22 M.R.SAMARASAM
23 A.RAJARAM
24 P.GOVINDASWAMI
25 M.MOHAMMED ISMAIL
26 A.RAMALINGAM

सत्यमेव जयते

-Vs-

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT ANIMAL
HUSBANDRY & FISHERIES DEPARTMENT FORT ST.
GEORGE CHENNAI-9.

...Appellants

2 THE COMMISSIONER FOR MILK
PRODUCTION & DAIRY DEVELOPMENT MADHAVARAM
MILK COLONY CHENNAI-51.

3 THE MANAGING DIRECTOR
TAMIL NADU COOPERATIVE MILK PRODUCERS
FEDERATION LIMITED AAVIN ILLAM
MILK COLONY , MADHAVARAM,
CHENNAI-51.

4 P.R.PARASURAMAN
5 R.SUNDARAMURTHY
6 A.VIJAYALAKSHMI
7 T.KOPERUNDEVI
8 P.S.SESHADRI
9 J.GOVINDARAJ
10 G.DEVARAJ
11 V.S.BALAKRISHNAN
12 S.AYYAPPAN
13 R.GOVINDAN
14 L.VEERA RAGHAVAN
15 P.MANI
16 P.RATHINAM
17 N.NARASIMHAN
18 E.CHELLAPPA
19 R.EZHUMALAI
20 M.S.PAUL
21 T.NATARAJAN
22 N.BALASUBRAMANIAN
23 K.SANTHANAM
24 V.S.CHANDRA MOULLEESWARAN
25 C.KUTTIYAPPAN
26 V.GANIPANDI
27 R.PERIAKARUPPAN
28 K.KABALI

...Respondents

Writ Appeal filed to set aside the order dated 17.09.2014
passed in WP.No.21522 of 2011.

W.P.No.21522 of 2011:- Petition under Article 226 of the
Constitution of India, for the issuance of writs of
certiorarified mandamus to call for the records of the 1st
respondent in Letter No.2159/MP.II/2010 dt 15.6.2011 and quash
the same and direct the respondents to grant pension payable to
the petitioners taking into account their period of service as
Government Servants varying from 25-35 years as the case may be
and pay all terminal benefits to the petitioners together with
arrears of pension from the date of their retirement along with
interest at such rate as may be considered to be reasonable by

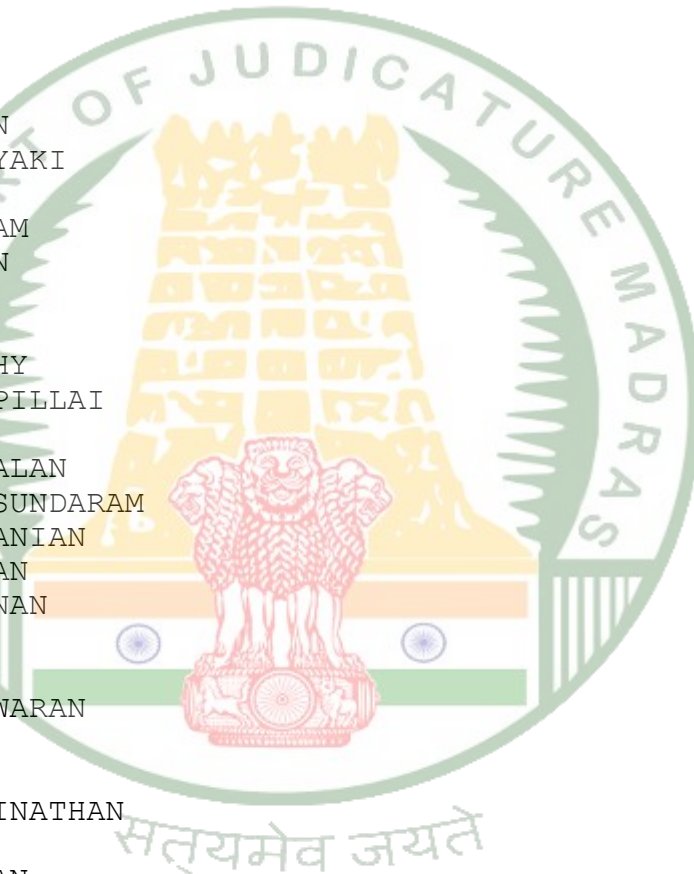
this Honourable Court.

For appellant : Mr.K.S.Viswanathan

For Respondents: Mr.L.P.Shanmugasundaram, Spl.G.P.
For respondents 1 and 2
Mr.S.T.S.Murthy, A.A.G.,
Assisted by Mrs.S.Varsha, for R-3
Respondents 4 to 28 given up

W.A.No.35 of 2015

- 1 K.PARGUNAN
- 2 S.SAMBANDAN
- 3 D.DEVAN
- 4 B.S.NARAYANAN
- 5 T.K.KOTAHINAYAKI
- 6 P.MANIAN
- 7 S.RAJAMANICKAM
- 8 D.PUSHPARAJAN
- 9 T.RANGARAJAN
- 10 B.SUBBIAH
- 11 M.LAKSHMIPATHY
- 12 V.SUBRAMANIAPILLAI
- 13 V.GUNASEELAN
- 14 K.SANTHA GOPALAN
- 15 P.MEENAKSHI SUNDARAM
- 16 S.BALASUBRAMANIAN
- 17 V.T.MURUGAPPAN
- 18 C.RADHAKRISHNAN
- 19 C.K.CHINNIAH
- 20 J.ARUMAIRAJ
- 21 S.KASIVISWESWARAN
- 22 V.RAMASAMY
- 23 M.AMARNATH
- 24 M.JESU SAVARINATHAN
- 25 V.IYYAPPAN
- 26 K.KAMALAKANNAN
- 27 V.SELVASEKAR
- 28 O.GAJENDRAN
- 29 M.S.MADUESAN
- 30 E.N.RAMAMURTHY
- 31 T.D.KRISHNAMURTHY
- 32 Y.RAJAN
- 33 A.KARUPPIAH
- 34 R.KANNIAH
- 35 A.JOHN MUHAMED
- 36 C.ARUMUGAM
- 37 M.R.SANTHAMURTHY
- 38 K.AYYAVOO



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39 M.LAKSHMANAN
40 S.RAJU
41 V.KARUPPIAH
42 K.GANESAN
43 A.ABDUL RASHEED
44 A.FAISULLAH
45 R.GOVINDAN
46 R.NARAYANAN
47 K.DHANARAJ
48 A.SUBRAMANIAN

..Appellants

-Vs-

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT ANIMAL
HUSBANDRY DAIRYING AND FISHERIES DEPARTMENT
FORT ST. GEORGE CHENNAI-9.
2 THE COMMISSIONER
FOR MILK PRODUCTION AND DAIRY DEVELOPMENT
MADHAVARAM MILK COLONY CHENNAI-51.
3 THE MANAGING DIRECTOR
THE TAMILNADU COOPERATIVE MILK PRODUCERS
FEDERATION LIMITED AAVIN ILLAM MILK COLONY
MADHAVARAM, CHENNAI-51.
4 AKBAR HUSSAIN SHERIFF
5 T.D.RAJAGOPALAN
6 T.BALASUBRAMANIAN
7 S.FREDERICK
8 A.SUBRAMANIAN
9 S.DURAIPANDY

...Respondents

Writ Appeal filed to set aside the order dated 17/09/2014
passed in WP No.16294/2011

WP No.16294/2011:- Petition under Article 226 of the
Constitution of India, for the issuance of a Writ of
Certiorarified mandamus to call for the records of the first
respondent vide his Letter No.2159/MP.II/2010 dated 15.06.2011
and quash the same and direct the respondent to grant the
pensionary benefits.

For appellant : Mr.K.S.Viswanathan

For Respondents: Mr.L.P.Shanmugasundaram, Spl.G.P.
For respondents 1 and 2

Mr.S.T.S.Murthy, A.A.G.,
Assisted by Mrs.S.Varsha, for R-3
Respondents 4 to 98 given up

COMMON JUDGMENT
(made by K.K.SASIDHARAN, J.)

The Hon'ble Supreme Court in its judgment dated 18 July 1997, in C.A.Nos.1387 to 1395 of 1993, made it clear that all those employees who have retired after 1 February 1983 from the Tamil Nadu Cooperative Milk Producers Federation shall be deemed to have opted to join the service of the Federation permanently and as such, they would be entitled to the terminal benefits in terms of G.O.Ms.No.1921, Agriculture (M.P.No-I) Department, dated 8 November 1983.

2. Even after declaring the law and issuing a direction in the very same subject matter, the appellants who were similarly placed, took up the issue with the Tamil Nadu Cooperative Milk Producers Federation Ltd., and ultimately, challenged the order unsuccessfully before the writ court. The common order dismissing the Writ Petitions is the subject matter of these intra court appeals.

3. The appellants were initially appointed in the Dairy Federation of the Government of Tamil Nadu. Subsequent to the formation of the Dairy Development Department, 634 Government employees were sent on deputation to the said Corporation on Foreign Service Terms. Subsequently, the Government, as per order in G.O.Ms.No.555, Agriculture Department dated 31 March 1980, formed a new organization known as Tamil Nadu Milk Producers Federation. The appellants continued on deputation in the Tamil Nadu Milk Producers Federation.

4. The Government of Tamil Nadu issued an order in G.O.Ms.No.1921, Agriculture Department, (M.P.) dated 8 November 1983 setting out the terminal benefits payable to Government servants on permanent absorption in the Tamil Nadu Milk Producers Federation, (hereinafter referred to as TMCPF). The Government Order provided for the exercise of option by the Government servants and procedure to be followed for extending the benefits. The crucial date was fixed as 1 February 1981.

5. The Government Order in G.O.Ms.No.1921 was challenged before the Tamil Nadu Administrative Tribunal. The original application was allowed and the matter was remanded for fresh consideration. The issue was taken up before the Hon'ble Supreme Court by the Government and the Federation.

6. The Hon'ble Supreme Court passed final orders on 18 July 1994 holding that all those employees who have retired after 1 February 1983 from the Tamil Nadu Cooperative Milk Producers Federation shall be deemed to have opted to join the service of the Federation permanently and as such, they would be entitled to the terminal benefits in terms of G.O.Ms.No.1921, Agriculture (M.P.No-I) Department, dated 8 November 1983.

7. Though the Supreme Court Judgment was binding even on the appellants, series of representations were submitted by them claiming pensionary benefits, treating them as Government servants. The representation was ultimately rejected by the Government by order dated 15 June 2011. The learned Single Judge dismissed the related Writ Petition.

8. The learned counsel for the appellants contended that even after the judgment delivered by the Hon'ble Supreme Court, the Government extended the benefits to 12 other employees. Similarly, according to the learned counsel, there was no action taken for recovery of the amount paid to the employees even after making the position clear by the Hon'ble Supreme Court. The learned counsel contended that Government has been adopting a discriminatory attitude and few employees were given pension, treating them as Government servants. The learned counsel though admitted the position that the judgment delivered by the Hon'ble Supreme Court will apply even to the case of the appellants, still maintained that they are eligible to the pensionary benefits on account of the string of orders passed by the Government.

9. We have also heard the learned Additional Advocate General on behalf of the respondent.

10. There is no dispute that the appellants were initially appointed in the Dairy Development Department. The appellants were sent on deputation to the newly formed Tamil Nadu Dairy Development Federation. The said Corporation was later converted into a new organization called Tamil Nadu Cooperative Milk Producers Federation Ltd. and continued even thereafter. The Government Order in G.O.Ms.No.1921, Agriculture (M.P.No-I) Department, dated 8 November 1983 was issued to give an option to the Government servants to continue on permanent absorption. The order passed by the State Administrative Tribunal quashing the said Government Order and directing the Government to re-look into the issue was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to pass a comprehensive order to the effect that all the employees who were on deputation shall be deemed to have joined the Federation. The order would apply to all the employees who were sent on deputation and who have retired after 1 February 1981.

The appellants were aware of the judgment rendered by the Hon'ble Supreme Court. Nothing prevented the appellants from approaching the Hon'ble Supreme Court, as any order passed would also affect their service conditions.

11. There is no question of submitting representations after the judgment delivered by the Hon'ble Supreme Court in the very same matter. The Supreme Court was very specific in its direction that all those employees who have retired after 1 February 1981 shall be deemed to have joined the service of the federation permanently. The Supreme Court made it very clear that entitlement is only to the terminal benefits in terms of the order in G.O.Ms.No.1921, Agriculture (M.P.No-I) Department, dated 8 November 1983.

12. The appellants have now come up with a grievance that even after the judgment delivered by the Hon'ble Supreme Court, the Government treated the other employees favourably and they were given pension as if they are all Government servants. The appellants had also cited the case of 12 other employees.

13. The Doctrine of Equality is a positive concept. Even if the Government has acted to favour few employees in total violation of the order passed by the Supreme Court, it would not be a ground to extend the benefit to others. The order passed by the Hon'ble Supreme Court would govern the service conditions of the employees who were inducted into the newly formed federation. Such being the factual and legal position, we are of the view that the appellants have no legally enforceable claim. We are therefore of the view that the intra court appeal deserves to be dismissed.

14. In the upshot, we dismiss the intra court appeals. No costs.
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Assistant Registrar

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Sub Assistant Registrar

To

- 1 The Secretary to Government,
Animal Husbandry Dairying and Fisheries Department,
Fort St.George, Chennai 9

2 The Commissioner,
Milk Production and Dairy Development
Madhavaram Milk Colony, Chennai 51.

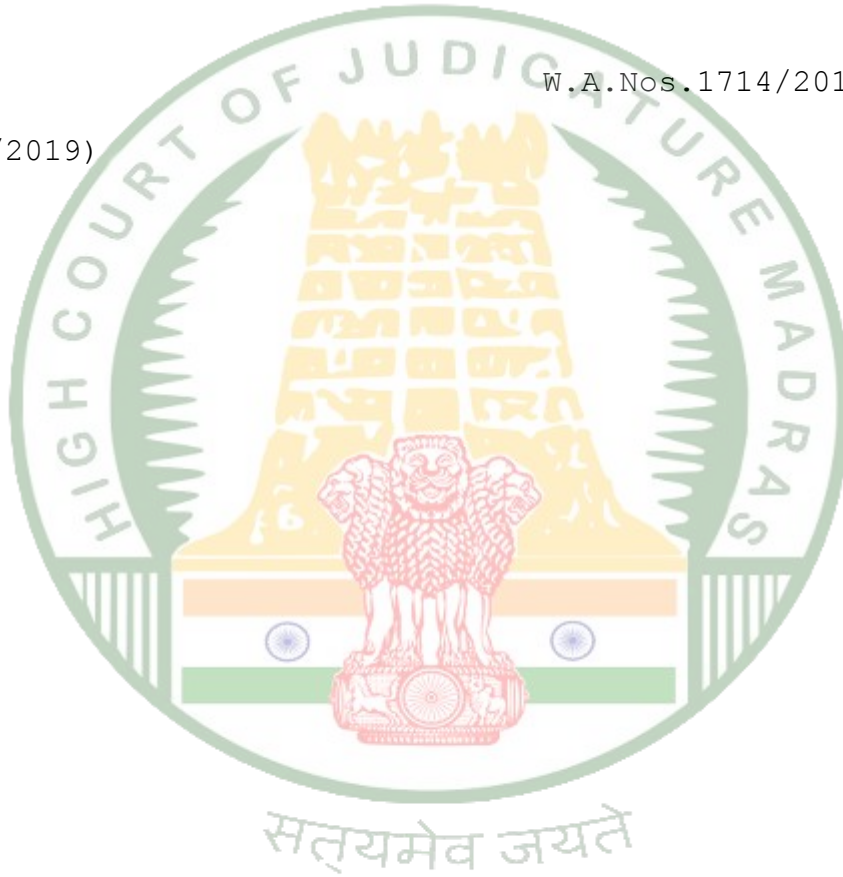
3 The Managing Director
Tamil Nadu Cooperative Milk Producers Federation Ltd.,
Aavin Illam, Milk Colony
Chennai-51.

+2CCs to the Govt.Pleader, vide SR.No.27481 & 27482

+2CCs to Mr.V.Suthakar, Advocate, SR.No.27602 & 27603

W.A.Nos.1714/2014 & 35/2015

Kak(26/06/2019)



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